

Regular Meeting
Monday, September 28, 2015
Bloomington Civic Plaza
1800 West Old Shakopee Road
Bloomington, Minnesota 55431-3027

- 1 CALL TO ORDER- 7 PM** Acting Mayor Lowman called the meeting to order at 7:00 p.m.
- Present: Councilmembers T. Busse, A. Carlson, and J. Oleson.
Acting City Manager Larry Lee.
- Absent: Mayor Winstead and Councilmembers C. Abrams and J. Baloga.
- 2 INTRODUCTORY**
- 2.1 FLAG PRESENTATION** Acting Mayor Lowman led the audience in the pledge of allegiance to the flag.
- 2.2 Active Aging Week Proclamation** Requested Action: Mayor read and present the Active Aging Week Proclamation.
- Acting Mayor Lowman read and presented a proclamation declaring September 27 – October 3 as Active Aging Week to Linda Christle, 50+ leader at Creekside Community Center. She invited the Council and public to an Open House/Safety Fun Fest at Creekside on October 1 from 10 am – 1 pm to learn what Creekside is all about.
- 3 CONSENT BUSINESS**
- 3.1 Ratify Labor Agreement - Police Dispatchers** Requested Action: Ratify one-year labor agreement 2015 with IAFF Metro Police and Fire Dispatchers, Local 4689, representing Police Dispatchers.
- Motion was made by Busse, seconded by Oleson, and all voting aye, to ratify a one-year labor agreement with IAFF Metro Police and Fire Dispatchers, Local 4689, representing the Police Dispatchers as presented in the agenda materials.
- 3.2 Order 2015-905 Pond Maintenance Project** Requested Action: Order the 2015-905 Pond Maintenance Project.
- Motion was made by Busse, seconded by Oleson, and all voting aye, to order the 2015-905 Pond Maintenance Project, which includes dewatering, excavation and disposal of pond sediments and minor storm sewer maintenance at four ponds as listed in the agenda item.
- 3.3 Civil Engineering Design Services Bolten and Menk Contract** Requested Action: Approve the contract for Civil Engineering Professional Design Engineering Services with Bolten & Menk, Inc. in the amount of \$125,000.00.
- Motion was made by Busse, seconded by Oleson, and all voting aye, to approve the contract with Bolten & Menk, Inc. as described above and in the agenda item.

- 3.4 Neighborhood Health Connection Healthy Activity Grant 2015 Public Health Budget Adjustment**
- Requested Action: Approve a 2015 Public Health budget adjustment for an Allina Health grant.
- Motion was made by Busse, seconded by Oleson, and all voting aye, to approve a 2015 Public Health budget adjustment for the Neighborhood Health Connection Healthy Activity grant in the amount of \$5,000 from Allina Health as described in the agenda item.
- 3.5 Safe Routes to School Jefferson Area ROW**
- Requested Action: Adopt a resolution directing staff to set “Just Compensation” figures and make offers to all affected property owners, and approve the Eminent Domain resolution for the 2016-704 Safe Routes to School Jefferson Area Improvements (City Project 2016-203).
- Motion was made by Busse, seconded by Oleson, and all voting aye, to direct staff to set “Just Compensation” figures and make offers to all affected property owners and approve the Eminent Domain resolution for the 2016-704 Safe Routes to School Jefferson Area Improvements Project as described in the agenda item. (R-2015-94)
- 3.6 Travel Request- Approve**
- Requested Action: Approve the out-of-state travel expenses for Councilmember Dwayne Lowman.
- Motion was made by Busse, seconded by Oleson, and all voting aye, to approve the out-of-state travel request for Councilmember Dwayne Lowman who will be attending the National League of Cities (NLC) Congress of Cities Conference in Nashville, TN from November 4-7, 2015, as stated in the agenda item.
- 3.7 Meeting Minutes City Council-Approval**
- Requested Action: Approve the August 24, 2015 (Regular) and September 14, 2015 (Regular) City Council Meeting minutes as presented.
- Motion was made by Busse, seconded by Oleson, and all voting aye, to approve the August 24, 2015 (Regular) and September 14, 2015 (Regular) City Council Meeting minutes as presented.
- 4 PUBLIC COMMENT PERIOD**
- 4.1 Response to Prior Meeting's Public Comments**
- Acting City Manager Larry Lee had no comments.
- 4.2 Public Comment**
- Acting Mayor Lowman opened the public comment period for anyone wishing to address the Council on matters not on tonight's agenda.
- Speaker #1: Sally Ness, 8127 Oakland Avenue South
Her comments again pertained to the Dar Al Farooq Youth & Family Center (AFYFC) at 8201 Park Avenue South and the Joint Use Agreement (JUA) the City says is better than the previous agreement. Regarding the berm on the south end of the football field, she said DAF took the soil for the creation of a holding pond and put it on the practice field. She said that property is part of the shared JUA but DAF didn't inform the City of their action. She said she was told the water pools at the south end of field. She said the City began maintaining the practice area that includes the berm and the DAF fence.

Ness said she told the City Manager of her concerns that tax dollars were being spent to maintain DAF's property and the Manager's response was that the City has always maintained those areas. She showed a copy of Recreation Improvements dated June 3 that indicated otherwise. She said it indicates the practice field and the fence were being maintained by DAF prior to the signing of the new JUA. She said the new JUA indicates DAF is supposed to take care of the fence and the practice area. She said the fence is completely on DAF's property and the practice area includes the berm. She also expressed concern that the documents provided by the City in response to her data request did not contain the e-mail or the correspondence the City Manager had said indicates the City has always maintained the area. She said the berm the City mows contains concrete chunks which can damage the mowers. She said documents from Park & Rec indicate a mower hit a concrete chunk but they still try to mow around them. She asked why the City continues to mow the DAF property. She also referenced an e-mail the Council received at 7:54 pm on August 3, 2015, from the City Manager regarding contamination of the berm. She clarified she is not concerned with PAH's in the DAF berm but with the PAH'S on the Smith Park baseball fields. She said Wright's Pond contains PAH's and Smith Park drains into that pond.

Lowman said he'll have Acting City Manager Larry Lee look into the issues expressed by Ness.

Speaker #2: Vi Rozek, 8214 Park Avenue South

She said she received an e-mail in which a Council member was quoted as having said the following about their neighborhood: "The AFYFC property is a very quiet and unpopulated area. A rather typical neighborhood most of the time." She said that was an unusual comment given what occurred in their neighborhood this past week and asked if the following sounds like a "typical" neighborhood to the Council. She and her neighbors were awakened very early on Thursday morning to what was happening but said they never received a letter notifying them ahead of time of what was to come. She showed photos of cars up and down her street and the side streets on Thursday morning. She said people couldn't get to work and buses couldn't get through because of the traffic. She said the DAF event with over 1,000 people in attendance should have been held at Moir Park, Hyland Park, or a convention center as has been done in the past. She showed photos of garbage bags overflowing from AFYFC's trash building and asked if the typical neighborhood has to deal with that, or graffiti in the park and on buildings and on the sidewalk, or semi-trucks parked in their neighborhood, or cars parking at the end of their driveways, or headlights shining into homes during the middle of the night. She asked why the City mows the berm and has to work around chunks of concrete, which could damage the mowers causing repairs at taxpayer's expense. She questioned what other things are hidden in the berm. She showed a photo of an unattended fire near the Park area. She said AFYFC was inspected on June 30 which resulted in four pages of violations. Another inspection in July resulted in a two-page report of needed corrections. She showed photos of dirty kitchen equipment and improperly handled and outdated food. She showed more photos of cars parking on the wrong side of the street and in a No Parking area with no police in the area. She said it's shameful the City Council has let this go on for four years.

Lowman again said the Acting City Manager will look into her claims.

For clarification, Lee said on the holiday, which was Thursday, staff from Police, the Fire Marshal's office, and Planning was on site to evaluate what was happening. He reported Police officers did give out citations that day.

**5 LICENSING DIVISION:
PUBLIC HEARINGS**

**5.1 Rental License Denial
Appeal**

Requested Action: Due to this unique and complex situation, direct staff to hold a Findings of Fact hearing before an independent third party Administrative Law Judge (ALJ) from the Minnesota Office of Administrative Hearings. The ALJ will prepare a report for City Council discussion that includes a recommendation on the issuance or denial of Craig Rheame's rental license, which will be considered at a future City Council meeting.

Environmental Health Manager Lynn Moore and City Attorney Sandra Johnson jointly addressed this item. Moore said the applicant applied for four rental licenses for townhomes located at 84th & 22nd Avenue South. She said staff denied the license applications under City Code Section 14.577A and B based on its determination that rental occupancies of these units exceeded the Code limitation of one family or four unrelated persons. She said the applicant has requested an appeal for that determination.

Johnson stated there is a fact issue and potentially a legal issue here. She said in the past, the City has referred these hearings to the Office of Administrative Hearings, which is a State office and a neutral body. The City has a contract with them. She advised the City Council to continue the public hearing without opening it to a future date to be determined by the parties at their mutual convenience. Council should also direct staff to advertise that date, time, and place for the continued public hearing so the public has notice of it. They should also direct the Office of Administrative Hearings to conduct the hearing, receive evidence, testimony, listen to the arguments of the attorneys, and bring back to the Council written Findings of Fact, Conclusions of Law, and a recommendation. She said ultimately the City Council determines whether or not the license should be issued. At that continued City Council meeting, the Council can hear the arguments of the attorneys as to whether or not the Administrative Law Judge (ALJ) correctly applied the law to the case. She said today, there will be no public hearing and no receiving of testimony. She said the ALJ will handle all of the fact finding. She said the ALJ's opinion should be issued within 30 days. She said this will come back to the City Council as soon as staff receives the ALJ's report.

Busse asked for confirmation that this is not an unprecedented situation in Bloomington. Johnson agreed it is not and said the City has referred some liquor licensing cases to the Office of Administrative Hearings. Cases are referred to that office whenever there is a need for a lot of testimony.

Motion was made by Carlson, seconded by Oleson, and all voting aye, to continue the public hearing to an undetermined date agreed upon by the parties, to direct staff to advertise the date, time and place of the public hearing, and to direct the Office of Administrative Hearings to make a recommendation on the issuance or denial of a license to be considered at a future City Council meeting.

**6 DEVELOPMENT
BUSINESS: PUBLIC
HEARINGS**

**6.1 Lupient Chevrolet; 1601
Southtown Drive; Major
Revision to Site Plan**

Requested Action: Adopt a major revision to the Final Site and Building Plans for a 1,785 square foot auto detailing/photo booth addition and demolition of a 911 square foot building located at 1601 Southtown Drive, Case 8972A-15, for Lupient Chevrolet, subject to the conditions listed in the staff report.

Lee stated BLMT Southtown Props is the property owner and Lupient Chevrolet is the user. They plan to construct a one-story 1,785 square foot addition onto the southwest side of their primary building (for detailing and a photo booth), demolish a 911 square foot building (sales office for used vehicles), and realign a portion of their parking lot. In addition, an infiltration garden will be added in the location of the used auto dealership building. He explained while this project doesn't meet the City's minimum Floor Area Ratio (FAR) of 0.6 for existing motor vehicle sales in the C-4 District, Council approved an approach for approving incremental changes to be made providing that three findings are met. He reviewed the three findings the Council needs to make to approve these incremental changes. He said staff recommends approval subject to the conditions listed in the staff report.

Busse said he appreciates that Council approved allowing some flexibility in the minimum FAR requirements in the Penn American District so each case can be considered individually. He said it lets the businesses in the area adapt as necessary.

Speaker #1: Christine Eid, Attorney Representing Lupient Automotive Group and Shawn Berry, NAI Architects
She said staff did a great job writing its recommendation. She assisted Lupient in working out a resolution to the proposed amendments to the Zoning Code that would allow auto dealers to improve their sites in increments while allowing the Penn American District Plan vision to be realized over the course of several years. She said this modification accomplishes that objective. She said this modification allows the northern portion of the site to be open for future development; whether it's Lupient or another future developer. It consolidates Lupient's existing operation and it conforms to the evolving nature of automobile sales, which is to market automobiles for sale online. The three factors the Council must consider before allowing flexibility in FAR are met in this case -- it increases the site activity, it is an active use of the site, and it fulfills the Penn American District Plan and brings the property into greater compliance with the existing Zoning Code. It brings the FAR closer to the required 0.6 for automobile dealerships in the area and sets the stage for future development on the site.

Oleson said he appreciated Eid's comments about the evolution of car sales and asked how often people purchase online cars without looking at them.

Eid replied in terms of automobile sales, they somewhat parallel the residential market in that general studies have shown auto dealerships are moving towards a higher density design. She said sales are becoming more internet based.

Oleson asked if Lupient is in regular contact with Met Council regarding the location of the Bus Rapid Transit Orange Line.

Eid replied Lupient wants to be fully cooperative in working with Christina Morrison from Metro Transit in trying to figure out what is the best way to structure the Orange Line.

Lowman thanked Lupient for working with staff to get the FAR up to 0.291 and for making some creative changes to the Penn American District.

No public testimony was received.

Motion was made by Carlson, seconded by Busse, and all voting aye, to close the public hearing on the application by Lupient Chevrolet for a major revision to their Final Site and Building Plans.

Motion was made by Carlson, seconded by Busse, and all voting aye, to adopt a major revision to the Final Site and Building Plans for a 1,785 square foot auto detailing/photo booth addition and demolition of a 911 square foot building for Lupient Chevrolet at 1601 Southtown Drive, subject to the conditions listed in the staff report.

7 TRANSPORTATION & UTILITY IMPROVEMENTS: PUBLIC HEARINGS None.

8 ORDINANCES: PUBLIC HEARINGS None.

9 OTHER: PUBLIC HEARINGS

9.1 Public Nuisance Abatement Assessments Requested Action: Adopt a resolution confirming assessment of public nuisance abatements.

Lee explained tonight is the public hearing on the unpaid assessments to properties for the following services provided by the City: Nuisance abatement/removal, tree removal, weed/brush removal, water, sewer, storm sewer, and solid waste (recycling), and property-related violations. As these charges have not yet been paid, the owed amounts will be assessed to the associated properties. Tonight's certification process guarantees the bills will be paid by the property owners and not the taxpayers. He reported an assessment hearing was held on all of these assessments but no one attended.

No public testimony was received.

Motion was made by Oleson, seconded by Carlson, and all voting aye, to close the public hearing on the various assessments.

Motion was made by Busse, seconded by Carlson, and all voting aye, to adopt a resolution confirming assessment of the public nuisance abatements. (R-2015-95)

Closed Public Comment Period

Acting Mayor Lowman asked if anyone else wished to address the Council on any matters not on tonight's agenda. No one came forward so the public comment period was closed.

9.2 Delinquent Tree Removal Assessments Requested Action: Adopt a resolution certifying the delinquent tree removal assessments.

Motion was made by Busse, seconded by Oleson, and all voting aye, to adopt a resolution confirming assessment of tree removal costs as listed in the agenda item. (R-2015-96)

- 9.3 Delinquent Weed/Brush Removal Assessments** Requested Action: Adopt a resolution certifying the delinquent weed/brush removal assessments.
- Motion was made by Busse, seconded by Oleson, and all voting aye, to adopt a resolution confirming assessment of delinquent weed/brush removal costs as listed in the agenda item. (R-2015-97)
- 9.4 Civil Fines for Property-Related Violation Assessments** Requested Action: Adopt a resolution certifying the civil fines for property-related assessments.
- Motion was made by Busse, seconded by Carlson, and all voting aye, to adopt a resolution confirming civil fine assessments as listed in the agenda item. (R-2015-98)
- 9.5 Delinquent Water, Sewer, Storm Sewer, and Solid Waste (Recycling) Assessment** Requested Action: Adopt a resolution certifying the delinquent water, sewer, storm sewer, and solid waste (recycling) assessments.
- Motion was made by Busse, seconded by Carlson, and all voting aye, to adopt a resolution confirming delinquent water, sewer, storm water drainage, and recycling utility assessments as listed in the agenda item. (R-2015-99)
- 10 ORGANIZATIONAL BUSINESS**
- 10.1 City Council Policy & Issue Update** Acting City Manager Lee explained there was an application for a firearms dealer to be located at 10750 Bloomington Ferry Road. He reported both the applicant and the property owner withdrew that application. As a result, the hearing that was scheduled on October 5, 2015, is no longer needed. The same mailing list used for the public hearing was also used to notify people of the withdrawn application. This item will still appear on the October 5 agenda because the hearing was advertised but the item will simply state the application has been withdrawn.
- Lee announced the Fresh Thyme Farmers Market at Penn & American will open early on Wednesday morning.
- Carlson said the Housing & Redevelopment Authority Commissioners were given a preliminary tour of Fresh Thyme but he still plans to attend the grand opening on Wednesday. He also mentioned the League of Women Voters is hosting Candidate Forums on Thursday, October 1 in the Council Chamber beginning at 6 pm. The Forum will begin with the School Board candidates followed by the City Council candidates.
- 10.2 Advisory Board of Health Appointments** Requested Action: Appoint one provider to the Advisory Board of Health for a term expiring December 31, 2015.
- Motion was made by Carlson, seconded by Busse, and all voting aye, to appoint Satbir Brar as a provider to a term on the Advisory Board of Health expiring December 31, 2015.
- 11 ADJOURN** Acting Mayor Lowman adjourned the meeting at 7:56 p.m.

Barbara Clawson
Council Secretary